

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Newport News Division)**

DEANGELO OSBORNE,

Plaintiff,

V.

Civil Filing No. 4:22-cv-59

JANE DOE, AS UNKNOWN  
EMPLOYEE OF THE FRESH  
MARKET, INC.,

and

THE FRESH MARKET, INC.

Defendants.

## NOTICE OF REMOVAL

Defendant, THE FRESH MARKET, INC. (hereinafter “Fresh Market”), by and through counsel, hereby gives notice of removal of the above action from the Circuit Court for the City of Newport News (“Circuit Court”) to the United States District Court for the Eastern District of Virginia, Newport News Division, pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446. As set forth below, this Court has original diversity jurisdiction over this action pursuant to Section 28 U.S.C. § 1332. All requirements for removal of this action are met through the allegations contained in the pleadings filed in the Circuit and this Notice of Removal.

In support of this Notice of Removal, Fresh Market states as follows:

1. There is pending in the Circuit Court for the City of Newport News, Virginia a Complaint styled Deangelo Osborne v. Jane Doe, Unknown Employee of The Fresh Market, Inc. and The Fresh Market, Inc., Case No. CL22-794-00 (the “State Court Action”). The Complaint

in the State Court Action was filed on or about April 6, 2022. A copy of the Complaint is attached hereto as **Exhibit A**.

2. Fresh Market received a copy of the Complaint in the State Court Action on or about April 13, 2022. Fresh Market filed a Demurrer/Rule 12(b)(6) Motion to Dismiss and Answer to Plaintiff's Complaint on May 11<sup>th</sup>, 2022 in the Circuit Court for the City of Newport News, but no further proceedings have been held in the State Court Action. A copy of the a Demurrer/Rule 12(b)(6) Motion to Dismiss and Answer is attached as **Exhibit B**.

3. This Notice of Removal is filed within thirty days upon which Defendant was first served with a copy of the Complaint and is therefore timely pursuant to 29 U.S.C. § 1446(b).

4. The State Court Action is properly removed under 28 U.S.C. § 1441(a) because the State Court Action is subject to the original of this Court pursuant to 28 U.S.C. § 1332, as explained below.

5. Fresh Market is informed and believe the Plaintiff, Deangelo Osborne, is an individual residing in the State of Virginia. See Ex. A ¶ 1.

6. Fresh Market is incorporated in the State of Delaware and has its principle place of business the State of North Carolina.

7. Plaintiff's Complaint seeks damages in the amount of \$199,950.00.

8. The citizenship of Jane Doe, purported employee of The Fresh Market, Inc. should be disregarded. See 28 U.S.C. § 1441(b)(1) ("In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded"); See also Berry v. SeaWorld Parks & Entm't, LLC, 2015 U.S. Dist. LEXIS 29900 at \*4 (E.D. Va. 2015).

9. This action is properly removed on grounds of diversity jurisdiction because (a) complete diversity exists between the Plaintiff and Fresh Market, (b) the amount in controversy herein exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and (c) the citizenship of Jane Doe, as unknown employee of The Fresh Market, Inc. is disregarded at this stage of the proceedings.

10. Written notice of the filing of this Notice of Removal will promptly be given to Plaintiff and the Clerk of the Circuit Court for the City of Newport News, Virginia, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, THE FRESH MARKET, INC. respectfully requests that this case proceed before this Court as an action properly removed.

/s/ Jessica G. Relyea  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice of Removal was electronically mailed and mailed, first class, postage prepaid, this 12<sup>th</sup> day of May, 2022, to:

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